IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.378 OF 2005
IN
COMPANY APPLICATION NO.559 OF 2003
IN
COMPANY PETITION NO.404 OF 1986

Mohammed Imtiyaz & Anr. ....Appellants

V/s.

Rajesh N. Sheth & Ors. ....Respondents

Ms.Jane Cox for the Appellants.

Mr.A.Y. Bookwala i/b Malvi Ranchoddas & Co. for Respondent No.3.

Mr.P.G. Rao - Deputy Official Liquidator present.

Mr.Melekar, Officer of Court Receiver present.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 6TH MAY, 2005.

P.C. :

. Heard advocates for the parties.

2. By an order of the Company Court passed in Company Petition No.404 of 1986, Modella Textile Industries Pvt.Ltd. was ordered to be wound up and the Official Liquidator was given the charge of the assets and the property of the Company. Thereafter by

an order dated 8th October, 1996 passed in Company Application No.224 of 1999 in Company Petition No.404 of 1986, the learned Company Judge directed that the wages of the workers will have to be calculated upto the date of winding up order. As far as the prayer for payment of interest is concerned, liberty was given to the Union to review the Application if there are surplus available after the sale of the assets.

3. Respondent No.3 is the son of erstwhile Director of the Company under liquidation. He filed Company Application No.559 of 2003 praying for discharge of the Official Liquidator and setting aside the order of winding up. Respondent No.3 undertook to deposit with the Official Liquidator the outstanding amount towards paying the amount of the legal dues due to the workmen, as also other claims referred to in the report of the Official Liquidator. But no undertaking was given towards the interest payable to the workers. Neither the Union nor the workers were made parties to the Application nor given any notice thereof. The Official Liquidator filed his report in the above Company Application but made no mention the order dated 8th October, 1999 giving liberty to the workmen to apply for interest in case there is surplus. The Company Application was disposed of by

the learned Company Judge on 11th March, 2004 discharging the Official Liquidator and directing him to hand over all the records and assets in its custody or possession to Respondent No.3 on behalf of the Company and revoked/permanently stayed the winding up order passed on 11th June, 1987 in Company Petition No.404 of 1986. This order was passed on undertaking of the Respondent No.3 that an amount of Rs.4,10,00,000/- be deposited with the Official Liquidator. There is no dispute that the said amount of Rs.4,10,00,000/- covers only principal amount and interest payable to the workers is not taken into consideration though the workers are entitled to interest. The amount of interest comes to about Rs.8.00 crores.

4. Mr.Bookwala, learned counsel appearing for Respondent No.3 fairly stated that Respondent No.3 is not in a position to deposit the amount of interest with the Official Liquidator. He stated that he has no objection to set aside the impugned order passed by the learned Company Judge and the amount deposited by the third Respondent is refunded to him. In this view of the matter, we allow the Appeal and set aside the order dated 11th June, 1987 as well as orders dated 11th March, 2004 and 31st March, 2004 whereby the

original order was corrected.

5. Official Liquidator is directed to refund to Respondent No.3 the amount deposited by him pursuant to the order of the learned Judge forthwith with interest, if any. Respondent No.3 is relieved from his undertaking. Official Liquidator is also directed to take steps to realise the assets of the Company and to distribute the wages of the workers in accordance with law.